

Yellow Cab Company of Nevada, Inc. and John Moscheo. Case 31-CA-12680

17 April 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 21 October 1983 Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Charging Party filed exceptions.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Yellow Cab Company of Nevada, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ Chairman Dotson would disregard the exceptions because they lack sufficient specificity to satisfy the requirements of Sec. 102.46(b) of the Board's Rules and Regulations.

² The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In sec. 3(a) of the judge's decision, the judge found that co-owner Schwartz told employee D'Amore that Schwartz could not reinstate anyone "who had to do with the Union or D'Amore." The record indicates, however, that Schwartz told D'Amore that he could not reinstate anyone "who has to do with the Union or Moscheo."

³ In the absence of exceptions thereto, Chairman Dotson adopts *pro forma* the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by informing employee Moscheo that employees who failed to report to work because of a strike would be terminated.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. This proceeding in which a hearing was conducted on May 18 and June 3, 1983, is based on an unfair labor practice charge filed against Yellow Cab Company of Nevada, Inc., herein called Respondent, by John Moscheo, on December 8, 1982, and a complaint issued against Respondent on January 17, 1983, by the Regional Director for Region 31 National Labor Relations Board, on behalf of the Board's General Counsel. The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the

Act, by discharging Moscheo because of his union or protected concerted activities and also alleges that Respondent independently violated Section 8(a)(1) of the Act by informing an employee that employees who failed to report for work because of a strike would be terminated. Respondent filed an answer denying the commission of the alleged unfair labor practices.¹

On the entire record, from my observation of the demeanor of the witnesses, and having considered the oral argument of the parties, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Evidence

1. The setting

Respondent provides taxicab and related services to the general public in Las Vegas, Nevada. During the time material herein Respondent's general manager was Jon Ashment. The alleged discriminatee John Moscheo was employed by Respondent as a taxicab driver.

On July 1, 1981, the Board in Case 31-RC-4785 certified the Union as the exclusive collective-bargaining representative of a unit of Respondent's taxicab drivers. Respondent contested the validity of the certification by refusing to recognize and bargain with the Union.

On or about August 2, 1981, the operations of three other Las Vegas taxicab companies—Checker Cab, Star Cab, and Nellis Cab—were merged into Respondent's business operation and commenced to operate from Respondent's facility under the supervision of Respondent's general manager Ashment.

On September 9, 1981, in Case 31-RC-5196 the Union petitioned the Board to conduct a representation election in a unit of taxicab drivers employed by the Checker, Star, and Nellis Cab Companies. On October 23, 1981, the Board's Regional Director for Region 31 issued his decision in that case where he dismissed the Union's petition because he considered that, as a result of the merger with Respondent of the operations of the Checker, Star, and Nellis Cab Companies, the smallest appropriate collective-bargaining unit consisted of a unit of taxicab drivers employed by all four companies. The Board, by its order dated December 15, 1981, denied the Union's request for review of this decision. Thereafter, consistent with its action in Case 31-RC-5196, the Board on January 6, 1982, issued an order vacating the certification it had previously issued to the Union in Case 31-RC-4785.

On December 9, 1981, in Case 31-RC-5251 the Union filed a petition with the Board seeking a representation election in a unit consisting of the taxicab drivers employed by Respondent, Checker, Star, and the Nellis Cab Companies. On December 29, 1981, the employers and the Union entered into an election agreement in that

¹ In its answer Respondent admits that it meets the Board's applicable discretionary jurisdictional standard and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Also, Respondent admits that the Union herein, Industrial, Technical and Professional Employees Division, National Maritime Union of America, AFL-CIO is a labor organization within the meaning of Sec. 2(5) of the Act.

case, approved by the Board's Regional Director, whereby they agreed to participate in a Board-conducted representation election on January 13, 1982, in the aforesaid unit. The election was held as scheduled. The tally of ballots shows that of the approximately 713 eligible voters 399 voted in favor of union representation and 135 voted against union representation. The employers filed timely objections to the election and to conduct affecting the outcome of the election. The Board's Regional Director in his report dated February 12, 1982, recommended that the Board overrule the employers' objections. On September 29, 1982, the Board issued its decision in Case 31-RC-5251 which adopted the Regional Director's recommendation and certified the Union as the exclusive collective-bargaining representative of the employers' taxicab drivers. The employers refused to recognize and bargain with the Union contending that the Board's certification was invalid. The Union filed an unfair labor practice charge with the Board challenging the legality of the employers' refusal to bargain. The matter was pending before the Board at the time of the hearing in this case.

Moscheo, until his discharge on December 7, 1982, was employed by Respondent since July 1980 as a taxicab driver. Prior to his discharge his only misconduct took place on September 8, 1981, when he engaged in the act of "high flagging"² for which General Manager Ashment issued him a disciplinary warning and a 3-day suspension. Ashment viewed Moscheo as an "above average employee." It is undisputed that Moscheo was a good income producer and that in February 1981, when the Company last ranked employees for shift assignment on the basis of their job performance, Moscheo was ranked number 11 out of 300 drivers.

It was not until late October 1981 or November 1981 that Moscheo actively and openly supported the Union. Prior to that he simply attended union meetings along with scores of other employees. During the Union's organizational campaign immediately preceding the January 13, 1982 representation election, Moscheo actively and openly campaigned on behalf of the Union and was one of two employee observers for the Union at that election. On March 21, 1982, Respondent was notified by the Union that Moscheo was one of five employees on the Union's negotiating committee. In May 1982 the Union's representatives, whose offices were located in San Francisco, California, and New York City, New York, gave Moscheo the keys to the Union's Las Vegas office and appointed him chief steward with the understanding that Moscheo would be the Union's contact in Las Vegas who would be responsible for the mail, telephone messages, and distribution of the Union's periodic newsletters to the employees. Moscheo was in fact the Union's most active employee adherent and it is undisputed that Respondent knew this.

On the other hand it is also undisputed that Respondent's driver Robert D'Amore was outspoken in his opposition to union representation. D'Amore had been employed by Respondent since June 1, 1981. He had

worked previously as a taxicab driver for the Nellis Cab Company since September 1, 1980, and transferred to Respondent when the companies merged their operation. It was not until December 1981 that D'Amore commenced to speak out against union representation. In January 1982, prior to the January 13, 1982 representation election, D'Amore, at the request of General Manager Ashment, served on a committee which consisted of Ashment, D'Amore, and a few of Respondent's owners. This committee spoke to the employees at a series of seven or eight meetings in an effort to persuade them to vote against union representation.³

2. A chronology

In early October 1981, immediately after being awarded a rate increase by the Taxi Cab Authority, Respondent instituted a new policy whereby the taxicab drivers, who previously had not paid for their gasoline, now shared the cost with Respondent, Moscheo, with three of the other drivers, who were among those unhappy about having to pay for their gasoline, went to a local television station with their grievance. The television station interviewed Moscheo who, during the interview, stated that Respondent had started to charge its drivers for gasoline right after the Company had been awarded the right to charge higher passenger fares. Moscheo stated that the drivers did not feel that this was "fair" and thought that the Company was "screwing" them. This interview was shown by the television station on its evening news programs. The next morning, General Manager Ashment, who had watched this news program and recognized Moscheo, summoned Moscheo to his office. Ashment told Moscheo that he did not appreciate his going on television and telling the whole city that Respondent was "screwing its drivers," and that his first inclination had been to "fire" Moscheo, and stated that Moscheo should give the Company's new gas program a chance and encourage the other drivers to do the same thing. Moscheo indicated that he would not follow Ashment's suggestion to encourage the drivers to give the new gas program a chance and told Ashment that one reason the employees needed to be represented by a union was to prevent the Company from changing the work rules every time the employees turned around.⁴

In the middle of December 1981 Robert D'Amore, one of Respondent's taxicab drivers, was issued a termination slip signed by General Manager Ashment which stated that he was terminated for having failed to turn in

³ Based on D'Amore's testimony which was not denied by Ashment. D'Amore, when he gave this testimony, impressed me with his sincerity.

⁴ The description of what took place during this meeting is based on Moscheo's testimony. Ashment specifically denied having threatened to discharge Moscheo. He also testified that he expressed his surprise that Moscheo was involved with the Union, that he then stated, "[G]ee whiz John, you know we are trying to do this, that, and the other," that they then discussed the various changes the Company had recently made and also discussed the Company's Christmas bonus, and that the meeting ended with Ashment telling Moscheo that he would like him to "go out on the street and use some of the same enthusiasm for our programs" as he had exhibited on the television program. I have credited Moscheo's version of this meeting because when they testified about the meeting Moscheo demeanorwise impressed me as a more credible witness than Ashment.

² The term "high flagging" refers to the act of neglecting to turn the taxicab meter on when carrying a passenger.

a complete book. D'Amore's supervisor, Jimmy Tinnell, suggested that D'Amore talk to Ashment because he (Tinnell) did not understand the termination slip. D'Amore promptly met with Ashment, who initially advised him that the reason for his termination was that he had been short on his book on a particular day. When D'Amore adamantly insisted that this could not have been the real reason for his termination, Ashment, after shutting the door to his office, declared:

I will be very frank with you and honest with you but I don't want it to get anywhere beyond this and I will deny I said it if it comes back to me. You were terminated by order of the owners You were seen distributing union literature out at the airport the previous Sunday.

D'Amore replied that he had been working that Sunday and had taken in over \$200 that day. Ashment told him that the report that he had been seen distributing union literature at the airport had come from Sam Bruen, a former supervisor and a friend of D'Amore. Ashment advised D'Amore to speak to Bruen and that Ashment would check into the matter further. D'Amore spoke to Bruen, who denied having made such a statement to anyone. Bruen at D'Amore's request phoned Ashment and spoke to him about this matter. Thereafter, Ashment informed D'Amore that he checked D'Amore's trip sheet for the Sunday in question and agreed that D'Amore could not have been at the airport, and told D'Amore that it had been a case of mistaken identity as there had been another "guy" named "Bernie" at the airport distributing the union literature who had been mistakenly identified as D'Amore. D'Amore, who had lost 3 days of work, was reinstated by Ashment, who stated that he would destroy the termination slip.⁶ It was at this point

⁶ The above description of D'Amore's mid-December 1981 termination and the revocation of that termination is based on D'Amore's testimony. Ashment testified that prior to December 1981 D'Amore turned in a short book and promised Ashment that he would not do this again, and that when, in mid-December 1981, he broke his promise he was terminated. Ashment further testified that his reason for revoking the termination was that Respondent's owners had previously instructed him to discharge D'Amore for distributing literature at the airport and Ashment did not want to give the owners the impression that in firing D'Amore he was carrying out this illegal order. In connection with this testimony Ashment admitted that some of Respondent's owners were unhappy about employing employees who actively supported the Union and the owners were putting pressure on him to "get rid" of them, that the owners had instructed him to discharge three other employees who were engaged in union activities, and that Sam Bruen, an owner of Nellis Cab Company, had told Ashment that D'Amore was seen distributing union literature at the airport. In crediting D'Amore's above-described version of his mid-December 1981 termination and its revocation, I have relied on the fact that in testifying about these events D'Amore testified in a straightforward and sincere manner and demeanorwise impressed me as an honest witness and a more credible witness than Ashment. In addition, I note that Ashment did not deny any of the above-described remarks attributed to him by D'Amore. Quite the contrary, when asked if he had told D'Amore that the reason for D'Amore's termination was that he had been observed passing out union literature, Ashment was unable to deny having made this admission to D'Amore. It is for all of these reasons that I have credited D'Amore's testimony despite the fact that the record reveals that he is not a disinterested witness, having been discharged by Respondent in January 1983 and having filed a charge with the Board contesting his discharge which, at the time of this hearing, was pending before the Board's Regional Office.

in time that D'Amore, who had been apathetic about the subject of union representation, commenced to speak out against union representation.

Once every 6 months Respondent's drivers bid for their work shifts, days off, and the particular taxicabs they drive. This bidding is done in order of strict seniority. On November 7, 1982, during the bid that was held on that day, Moscheo, in the presence of between 100 and 200 drivers in Respondent's yard, initiated an argument with D'Amore concerning the seniority of D'Amore and the three or four other former Nellis cabdrivers who were employed by Respondent. D'Amore and the other former Nellis cabdrivers had been permitted by Respondent to use a certain amount of the time they had worked for Nellis in computing their seniority for purposes of the bid. Moscheo complained to D'Amore that D'Amore and the other former Nellis taxicab drivers were receiving preferred treatment from Respondent in being permitted to use their time of employment with Nellis in computing their seniority for the bid. Moscheo stated that the reason D'Amore and the other former Nellis taxicab drivers were being accorded this special treatment was that they were "brown nosing" Respondent. Several of the drivers in the yard indicated that they agreed with Moscheo that it was not fair that the former Nellis taxicab drivers were being allowed by Respondent to use their time of employment with Nellis Cab in computing seniority for the bid. A loud and heated argument took place between D'Amore and Moscheo concerning this subject which lasted approximately 30 minutes. There was no physical violence engaged in by the participants nor was there any threat of physical violence. During the argument Moscheo stated that the Union and Moscheo, as a member of the Union's negotiating committee, would do everything that they could to eliminate the seniority being accorded D'Amore and the other former Nellis taxicab drivers now employed by Respondent.

The next day, November 8, 1982, was D'Amore's day off from work. He was telephoned at home by General Manager Ashment who asked him to come to Ashment's office. When he arrived there he found Ashment and Milton Schwartz, one of Respondent's owners. Ashment began the meeting by asking D'Amore what had taken place the previous day between D'Amore and Moscheo. D'Amore described what had taken place. Ashment asked whether Moscheo and D'Amore had exchanged any blows or pushed one another. D'Amore stated that they had just engaged in a very loud argument. Ashment indicated that he intended to discharge Moscheo and asked whether D'Amore would write out a statement describing what had taken place. D'Amore responded by stating that he felt that if Ashment discharged Moscheo that it would make Moscheo look like a martyr to the rest of the employees and thus make the Union stronger, which would be a mistake because the Union, D'Amore stated, did not have that much support among the em-

ployees.⁶ Ashment responded by stating that Moscheo would not be terminated.⁷

On November 18, 1982, Frank Hartnett visited Moscheo at his home and told him that he had heard that Susan Patridge was "going to hang him by the balls." Hartnett had been a driver employed by Respondent, and a member of the Union's negotiating committee, until he was discharged by Respondent on November 15, 1982, for allegedly jamming Respondent's radio frequency thereby making it impossible for the dispatcher to contact drivers. Susan Patridge, who had rented a room in Moscheo's house from approximately June or July to October 1, 1982, for herself and her daughter, was the dispatcher on duty when Hartnett allegedly jammed Respondent's radio system. Respondent had contested Hartnett's claim for unemployment compensation insurance, and an unemployment compensation hearing involving Hartnett's claim was scheduled for sometime in December 1982. Moscheo was Hartnett's representative in this matter. When on November 18, 1982, Hartnett told Moscheo that he had heard that Patridge had stated she was "going to hang him by the balls," Moscheo concluded that this meant that Patridge intended to give testimony for Respondent in the unemployment compensation hearing which would hurt Hartnett's case. Accordingly, on November 18, 1982, immediately after Hartnett spoke to him, Moscheo telephoned Patridge at her home. It is undisputed that Moscheo began the conversation by telling Patridge that there was some mail waiting for her at his house. The remainder of the conversation is in dispute. Moscheo testified that he then told Patridge that he had heard that she intended to hang Hartnett by the balls and asked whether this was true, and that in response Patridge stated, "[H]e shouldn't have did what he did." Moscheo testified he replied by stating, "[l]ittle girl there is very strong union activity going on right now and you should be very careful where people's jobs are concerned because I don't want to see you hurt," and told her it was time for his dinner and he would get in touch with her later. Patridge, on the other hand, testified that when Moscheo told her that he had heard that she was going to hang Hartnett by the balls, she asked for the name of the person or persons who had told him this, and that Moscheo replied, "[N]ever mind who told me

that," and asked whether she in fact made the statement. Patridge testified she responded in the negative, and that, when, in response to her inquiry, Moscheo again refused to tell her who told him she had made this statement, Patridge told Moscheo that if Moscheo brought that person to her she would deny making that statement to the person's face. Moscheo, according to Patridge, at this point raised his voice and declared: "All I can tell you little girl is when you go to testify, you had better be on the right side of the fence or you are going to get hurt." Patridge replied, "Wait a minute," but was abruptly cut off by Moscheo who stated he had to go to dinner and hung up. When Moscheo and Patridge testified about this conversation Patridge's demeanor was good whereas Moscheo's was poor; thus, I reject Moscheo's and credit Patridge's testimony.⁸

On September 29, 1982, as described supra, the Union was certified by the Board as the exclusive collective-bargaining representative of the drivers employed by Respondent and the three companies which had merged with it, but in order to contest the validity of the Board certification Respondent had refused to recognize and bargain with the Union. The Union's negotiation committee, including Moscheo, met with a union representative to decide what, if anything, the Union's response to Respondent's refusal to bargain should be. They discussed the possibility of having the drivers engage in a strike and of bringing to the public's attention the employees' grievances through the media. Thereafter, during the months of October and November 1982, Moscheo spoke to the employees and suggested that, in retaliation for Respondent's refusal to bargain with the Union, the employees should strike Respondent during the Consumers Electronic Convention scheduled for early January 1983; that on December 13, 1982, the employees voice all of their grievances to the public through the media; and that they boycott the several special projects which Respondent had initiated to improve its business.

Late in November 1982 General Manager Ashment learned of Moscheo's aforesaid activity. He heard rumors that the Union intended "to do something on December 13 which was going to blow the lid off of Respondent" and also intended to strike Respondent during the Consumers Electronic Convention scheduled for early January 1983, on December 1, 1982, Ashment contacted Moscheo at his home and told him to report to Ashment's office for a meeting prior to reporting for work that day. Moscheo complied and met with Ashment that day for approximately 2-1/2 hours in Ashment's office.

Ashment began the meeting by indicating that he had heard a rumor that the Union planned something for December 13 and was going to strike during the Consumers

⁶ As I have noted supra, D'Amore at this point in time was vocal in his opposition to union representation.

⁷ The description of Ashment's November 8, 1982 conversation with D'Amore and the way it was initiated is based on D'Amore's testimony. Ashment testified that D'Amore told him that Moscheo and he had engaged in a very heated discussion, with a lot of yelling, about the seniority of the former Nellis taxicab drivers and that Moscheo had stated that the Union would see that their seniority was taken away. Ashment further testified that D'Amore told him that he was not telling Ashment this to get Moscheo in any trouble, that he did not think Moscheo should be terminated for his conduct, but that D'Amore just wanted Ashment to be aware of the fact that the drivers were upset about the "seniority situation." Schwartz, who was placed by both D'Amore and Ashment as being present in the office during this conversation, testified that he as not present. I have credited D'Amore's version of how the meeting was initiated and what was said by Ashment because when D'Amore testified about these matters D'Amore's demeanor was very impressive whereas Ashment's was unimpressive. I also note that Ashment was unable to recall whether it was he or D'Amore who initiated this meeting and that he was vague and evasive when asked whether he indicated during this meeting that it was his intention to discharge Moscheo.

⁸ This was not the only occasion when Moscheo threatened employees in an effort to get them to support the position he was advocating rather than Respondent's. Thus, the undenied and credible testimony of the General Counsel's witness, D'Amore, is that in late November or early December 1982 in speaking to a group of the drivers about a strike against Respondent because of Respondent's refusal to bargain with the Union Moscheo warned that, if "drivers turn fink" and did not support the union strike, "somebody is going to get in the cabs and blow their heads off."

Electronic Convention. He asked Moscheo about the truth of this rumor. Moscheo indicated that he was reluctant to discuss these matters and instead raised the subject of Frank Hartnett's discharge.⁹ Moscheo stated that he thought Hartnett's discharge was not fair, explained why he felt this way, and stated that he thought Hartnett had been discharged because he was a member of the Union's negotiation committee. Ashment denied this accusation, explained the reasons for Hartnett's discharge, and asked Dispatch Supervisor Martinez to step into the office to corroborate his explanation.¹⁰

When the discussion concerning Hartnett's discharge ended, Moscheo advised Ashment that the drivers were very upset because Respondent was ignoring the representation election vote and was refusing to bargain with the Union. He told Ashment that the drivers did not think this was right and, because of this, were seriously considering going to the media on December 13, 1982, with their grievances. Moscheo described the various grievances that the drivers intended to publicize through the media. Ashment justified Respondent's actions with respect to some of the grievances mentioned by Moscheo and asked Moscheo not to publicize the grievances through the media. Ashment explained to Moscheo that such publicity while it might hurt Respondent might also hurt the drivers' pocketbooks if customers in sympathy with the employees' grievances refused to use Respondent's taxicabs. Moscheo indicated that he still intended to publicize the employees' grievances through the media as scheduled. Ashment asked whether a meeting with the owners would persuade the Union not to go to the media with the employees' grievances. Moscheo stated that he felt the Union would be agreeable to such a meeting in place of going to the media with the employees' grievances, but that the meeting would have to take place on December 13, 1982, the date on which the Union had planned on going to the media, and that Union Representative Guay, who had made arrangements to be present in Las Vegas on December 13, 1982, would have to be present at the meeting. Ashment indicated that he could see no objection to this but that he would have to speak to the owners about the meeting and would speak to Moscheo in a few days to let him know if the December 13 meeting was agreeable to the owners. Moscheo also stated that he would determine whether such a meeting was agreeable to the Union.

Also during this meeting Moscheo stated that the drivers were so upset over Respondent's refusal to bargain that they were also considering a strike and that the Union intended to have the drivers strike early in January 1983 during the Consumers Electronic Convention. Ashment asked how successful Moscheo thought such a strike would be. Moscheo stated that he thought 85 percent of the drivers would support it. Ashment indicated that he felt Moscheo was being too optimistic. Moscheo disagreed. Ashment then questioned the legality of the strike. Moscheo replied by stating that such a strike would be legal because the Union had been certified by

the Board and Respondent's refusal to bargain was an unfair labor practice. Ashment informed Moscheo that "any driver who was supposed to report for work and did not report for work because of the strike would be terminated." Moscheo stated that Respondent could not terminate employees for striking and told Ashment that, if Ashment telephoned a Board agent, whose business card Moscheo gave Ashment, Ashment would find out that such conduct would be illegal. Ashment, in Moscheo's presence, telephoned the Board agent and after speaking to the Board agent informed Moscheo that the strike would be legal if it was an unfair labor practice strike, but that Respondent would have the right "to hire new drivers" in the absence of the strikers and that Respondent would only be obligated to rehire the strikers "as the Company saw fit and only if they needed them and [Respondent] would have the right to review the records to see if [Respondent] did want to hire them."¹¹

On December 3, 1982, Moscheo received a memo signed by Ashment dated December 3, 1982, which stated:

O.K. for meeting on the 13th at 11 a.m. in my office.

I would request that because this is not a negotiating session but a question and answer session that those in attendance be drivers and owners—(no union people).

Pete, Milton, and Dave will be there.¹²

Upon receipt of this memo Moscheo telephoned Ashment and stated that he had understood that Ashment had indicated during their December 1 meeting that he had no objections to Union Representative Guay being present at the December 13 meeting and now his memo indicated that no union representatives could attend. Under the circumstances, Moscheo told Ashment that he, Moscheo, would not attend the meeting and the Union would simply go ahead with their plans to publicize the employees' grievances on that date through the media. Ashment responded by stating that the prohibition against union representatives attending the meeting was not his doing and in effect begged Moscheo to attend the December 13, 1982 meeting with the owners. Moscheo agreed to attend the meeting.¹³

¹¹ The above description of the December 1 meeting between Moscheo and Ashment is based on a composite of Moscheo's and Ashment's testimony, except in two instances where their testimony was inconsistent. Ashment denied that Moscheo asked that Union Representative Guay be present at the December 13, 1982 meeting and, while admitting that he threatened to terminate the taxicab drivers who engaged in a strike, testified that after speaking to the Board agent he told Moscheo that the strikers could be terminated but had to be put on a preferential rehire list. I have rejected Ashment's aforesaid testimony and credited Moscheo's, as set forth above, because demeanorwise Moscheo impressed me as an honest and reliable witness, a more credible witness than Ashment, when he testified concerning these disputed matters.

¹² "Pete, Milton, and Dave" refer to Pete Eliades, Dave Weldon, and Milton Schwartz, three of Respondent's six owners.

¹³ The above description of Moscheo's telephone conversation with Ashment is based on Moscheo's testimony. Ashment testified that this conversation took place on either December 1 or 2 and that it was during this conversation, not during the December 1 meeting, that Moscheo

⁹ As I have noted supra, Hartnett, a member of the Union's negotiating committee, had been discharged by Ashment on November 15, 1982.

¹⁰ Martinez left the office immediately thereafter.

Continued

On December 5, 1982, Richard Martinez, Respondent's dispatch supervisor, was riding home after work at approximately 3:45 p.m. with dispatcher Susan Patridge and taxicab driver Shipp in Patridge's automobile. Normally, Martinez used his own automobile but on this day his automobile had broken down so he rode with Patridge since they resided in the same area. During the ride Martinez received the impression from Patridge's demeanor that something was bothering her. When Martinez asked what was "bugging" her, Patridge replied by stating, "Nothing, I don't want to talk about it." But after a short interval Patridge told Martinez that approximately a week before she had received a threatening telephone call from Moscheo concerning her testimony with respect to Frank Hartnett's discharge. Martinez asked why she had not told him about this previously. Patridge stated that she was afraid Moscheo would get mad at her inasmuch as she had lived in his house and knew how he could be. Also Patridge stated she was afraid that if she reported the incident the Company would get mad at Moscheo and the incident "would be blown out of proportion."

During the evening of December 5, 1982, Martinez, who was not scheduled to work at Respondent's premises the next day, telephoned General Manager Ashment at his home and told him that Patridge had advised him that she had received a threatening telephone call from Moscheo concerning her testimony about Hartnett's discharge. Ashment stated he would speak to Patridge the next day about the incident.

On Monday, December 6, 1982, shortly after he arrived at work at 7:30 a.m., Ashment called Patridge to his office and informed her that Martinez had told him that she had been threatened by Moscheo and asked her for an explanation. Patridge indicated that she did not want to discuss the matter. Ashment stated that he needed to be informed about such conduct inasmuch as the Company could not tolerate it. Patridge then told Ashment that Moscheo had telephoned her at home and told her that if she testified against Frank Hartnett she could get hurt. Patridge explained she had not come forward earlier with this information because she felt that Ashment would terminate Moscheo and she was afraid. Ashment asked whether Patridge would write a statement for him with the details and sign it. Ashment explained to Patridge that the reason he needed a signed statement was that a threat like the one she was attributing to Moscheo was serious and was grounds for termination, and that if Ashment did in fact terminate Moscheo for this conduct Moscheo would in all probability file an unfair labor practice charge with the National Labor Relations Board and there also could be litigation connected with Moscheo's claim for unemployment compensation and Patridge would be involved as a witness. Patridge indicated she was very reluctant about getting involved and asked whether she could think about the matter. Ashment told her to think it over and do what-

ever she had to do but that if she gave him a signed statement he intended to terminate Moscheo and Patridge would be involved. Patridge returned to her work station and sometime within the next 2 hours she decided to write out a statement describing Moscheo's threat and in fact wrote out such a statement which she gave to Ashment shortly before noontime. The statement which Patridge signed reads as follows:

On Nov. 20, 1982 I was at home after work and I received a phone call from John Moscheo. I know it was John Moscheo because I rented a room in his residence for about 4 months from June '82 to Oct. '82. He said he heard a rumor that I said I was going to hang Frank Hartnett on his termination. I said I hadn't said it. He refused to tell me who said it, but followed with "Little girl when you go to testify you better be on the right side of the fence or you could get hurt."

Ashment asked whether Patridge was sure that November 20, 1982, was the day on which her conversation with Moscheo took place. Patridge replied in the negative. She stated that she was sure it took place about 1 week after Hartnett's November 15, 1982 discharge. Ashment advised her that under the circumstances she should insert in the statement the phrase "or about the week of" between the words "on" and "November 20, 1982." Patridge took the statement back to her work station and made the aforesaid insertion, but when she returned to Ashment's office later that day to give him the statement he had left for the day, so she gave him the statement when he arrived at work the next day, December 7, 1982, and dated it December 7, 1982.

On December 6, 1982, after Patridge had informed him of Moscheo's threat, as described above, Ashment attended a previously scheduled meeting of Respondent's board of directors. During the meeting Ashment informed the directors that a taxicab driver had threatened an employee and explained the circumstances of the threat and was asked by the directors, "What is the problem, just fire him." Ashment told them that the problem was that the taxicab driver "has been a good employee but he is union" and that the incident occurred approximately 10 days previously but he had just learned about it; he asked the directors what he should do and recommended that if Patridge gave him a signed statement Moscheo be terminated. The directors agreed with his recommendation.

On receiving the signed statement from Patridge early in the morning of December 7, 1982, Ashment promptly wrote out Moscheo's termination slip which was given to Moscheo later that day when he reported for work. The termination slip, which is entitled "Notice of Termination of Employment," is dated December 7, 1982, and signed by Ashment and is exed in the space marked "conflict with other workers." In the space entitled "explanation" Ashment wrote "making bodily harm threats to a female employee of this company." At no time did either Ashment or someone else from management ever ask Moscheo for his version of what had taken place during his conversation with Patridge.

asked that Union Representative Guay be present at the December 13 meeting since Guay was scheduled to be in town that day. As I have indicated supra, I have rejected Ashment's testimony on this point inasmuch as Moscheo impressed me as a more credible witness.

On January 26, 1983, Robert D'Amore, a taxicab driver employed by Respondent, was discharged. D'Amore's undenied testimony is that sometime thereafter two of Respondent's owners, Milton Schwartz and Peter Eliades, promised him that he would be reinstated. On March 1, 1983, D'Amore telephoned Schwartz and asked him when he was going to be reinstated. Schwartz told him that he was not going to be reinstated. D'Amore reminded Schwartz that he had given him his word that he would be reinstated with full backpay because he had taken and passed a polygraph test at Schwartz' request. D'Amore stated that Schwartz had never in the past gone back on his word. Schwartz replied by stating that his intent had been to reinstate D'Amore with full backpay, but that he had become aware that D'Amore had been seen on several occasions with Moscheo, "the union representative," and had been seen in Moscheo's office and even eating lunch with him. D'Amore expressed surprise that this would constitute a reason for not reinstating him. Schwartz replied: "There is no way I can hire anybody who has [anything] to do with the Union or Moscheo." This ended the conversation.¹⁴

While employed by Respondent, D'Amore, as I have described supra, openly campaigned on behalf of Respondent against union representation. One of Respondent's owners, Pete Eliades, shortly after the Union's September 29, 1982 certification, told D'Amore on three or four occasions that the Union's certification was meaningless because as far as he was concerned the Union "was never going to be there" because Eliades would shut down the doors of the Company and of the Star Cab Company, which he owned in its entirety, before he allowed that to happen.¹⁵

¹⁴ The description of this conversation is based on D'Amore's testimony. Schwartz testified that D'Amore told him he would be issuing a subpoena to Schwartz to appear as a witness at D'Amore's unemployment compensation hearing and that D'Amore also told him that he had unsuccessfully tried to get his job back. Schwartz denied mentioning the Union during this conversation and denied informing D'Amore that he could not reinstate because he had been seen with Moscheo. I have credited D'Amore's version of this conversation because when he testified about the conversation his demeanor was good whereas Schwartz' was poor. In assessing D'Amore's credibility I have considered that he is not a disinterested witness because at the time of the hearing he had been discharged by Respondent and had filed unfair labor practice charges with the Board claiming that this discharge was illegally motivated. In view of this I was especially observant of D'Amore. He impressed me as an honest witness.

¹⁵ Based on D'Amore's testimony. Eliades testified that on numerous occasions D'Amore told him that he, D'Amore, was opposed to union representation, but that Eliades never indicated to D'Amore that Eliades was opposed to union representation and did not threaten to shut down the door of the Company to avoid union representation. Indeed, Eliades testified, "I have nothing against the Union, I have worked for the Union, I have been a union member for 17 years, and there is nothing wrong with the Union when it is on a 50/50 basis." He also testified that on "many occasions" he told D'Amore, "I have nothing against unions. If they come in we will sit down and negotiate with them." However, later in his testimony Eliades admitted that he once told D'Amore, if the Union succeeded in organizing the employees of the Star Cab Company, a company wholly owned by Eliades, that: "If they organize and they win, what are they going to do? The best thing they can do, just strike me and close me down." This is hardly consistent with his previous testimony which portrays him as an employer who would welcome a union with open arms. I have credited D'Amore's above-described remarks attributed to Eliades because demeanorwise he impressed me as an honest witness whereas Eliades did not.

3. Discussion and conclusionary findings

a. Moscheo's discharge¹⁶

I am persuaded that the General Counsel has established by a preponderance of the evidence that Moscheo's union activity was a motivating factor in Respondent's decision to discharge him. I have reached this conclusion for the following reasons.

Moscheo was the leading union adherent employed by Respondent. He was one of the Union's two observers at the January 13, 1982 representation election and was thereafter appointed to the Union's negotiation committee and designated as the Union's chief steward. Since the nearest union representative was stationed thousands of miles from Las Vegas, Moscheo was designated by the Union to act as the Union's contact in its dealings with the employees and Respondent. It is undisputed that Respondent knew that Moscheo was the leading and most active union adherent among its employees.

Respondent was opposed to the Union representing its employees. This is evidence by the fact, as described in detail supra, that prior to the January 13, 1982 representation election Respondent held a series of seven or eight meetings with its employees in an effort to persuade them to vote against union representation.

Respondent expressly indicated that it was hostile towards Moscheo because of his union activity. Thus, as described in detail supra, in March 1983 one of Respondent's owners, Milton Schwartz, reneged on his promise to reinstate driver Robert D'Amore if D'Amore passed a polygraph test because, as Schwartz explained, D'Amore had been seen on several occasions with Moscheo, "the union representative," and Schwartz could not reinstate anyone "who had to do with the Union or D'Amore."

Respondent indicated that it was willing to take illegal and drastic steps in order to defeat the Union and to avoid bargaining with the Union. As I have found supra, it is undisputed that Respondent's general manager, Ashment, was told by more than one of Respondent's owners that they were unhappy about employing employees who actively supported union representation and instructed Ashment to "get rid" of the union activists and specifically instructed him to discharge three named employees because of their union activities. Also, as de-

¹⁶ In determining whether, as alleged in the complaint, Respondent discharged Moscheo because of his union activities in violation of Sec. 8(a)(3) and (1) of the Act, I have herein applied the Board's test set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), approved in *NLRB v. Transportation Management Corp.*, 103 S.Ct. 2469 (1983), by the Supreme Court, wherein the Board stated that an 8(a)(3) and (1) violation is established where the General Counsel has shown that an employer's opposition to protected activity was a "motivating factor" in a decision to take adverse action against an employee, and where the employer, in the face of such a showing, has failed to "demonstrate that the [adverse action] would have taken place even in the absence of protected conduct." It is also settled that "under [Section 8(a)(3) and (1)], it is undisputed that if the employer fires an employee for having engaged in union activities and has no other basis for the discharge, or if the reasons that he proffers are pretextual, the employer commits an unfair labor practice." *NLRB v. Transportation Management Corp.*, *ibid.* In other words, a violation of Sec. 8(a)(3) is made out where the record shows that an employer has seized on a legitimate reason as a pretext in order to cover up its actual discriminatory motive. See, e.g., *NLRB v. Berger Transfer Co.*, 678 F.2d 679, 691-692 (7th Cir. 1982), and cited cases.

scribed in detail *supra*, following the Union's January 13, 1982 election victory and its certification by the Board on September 29, 1982, one of Respondent's owners, Pete Eliades, told employee D'Amore on more than one occasion that the union certification was meaningless because Eliades would shut down Respondent before it ever recognized the Union.

General Manager Ashment on at least one occasion carried out Respondent's owners' instructions to discharge employees because of their union activities. As I have described in detail *supra*, Ashment believed that D'Amore had been distributing union literature. Ashment, in discharging D'Amore, used as a pretext the fact that D'Amore had recently failed to turn in a complete book.¹⁷

In October 1981, as described in detail *supra*, when Moscheo appeared on television and publicized the drivers' grievance of having to pay for their gasoline, General Manager Ashment learned for the first time that Moscheo was a union activist and promptly summoned him to his office and illegally threatened to discharge him for having publicized the drivers' grievance through the media. Thereafter, as described in detail *supra*, in November 1982 Ashment seized on an argument initiated by Moscheo with driver D'Amore and intended to use this as an excuse to discharge Moscheo because of his union activity, but was dissuaded from doing so by D'Amore, an outspoken antiunion employee, who in effect pointed out to Ashment that the pretextual basis for the discharge was so obvious that it would make Moscheo a martyr in the eyes of the employees which would increase the Union's support among the employees.¹⁸ It was only 1 month later that Ashment discharged Moscheo for threatening dispatcher Patridge.

In summation, Respondent was opposed to union representation; Respondent was hostile towards Moscheo because of his role as the leading union adherent among its employees; Respondent's owners instructed General Manager Ashment to discharge employees who were union activists and in at least one instance Ashment carried out this instruction by discharging an employee for engaging in union activity and used a legitimate business reason as an excuse to justify the discharge; and, only 1 month before Moscheo's discharge, Ashment was dissuaded from using a blatantly pretextual reason as an

excuse to discharge Moscheo for his union activities. It is for all these reasons that I am persuaded that the General Counsel has established that Respondent's hostility towards Moscheo because of his union activities was a motivating factor in its decision to discharge him.¹⁹

I shall now evaluate Respondent's defense and determine whether Respondent has established that it would have discharged Moscheo on December 7, 1982, even in the absence of his union activities. As described *supra*, Moscheo's December 7, 1982 termination slip states that he was being discharged for "making bodily harm threats to [Susan Patridge]." The circumstances which resulted in the issuance of the termination slip have been described in detail *supra*, and are briefly restated as follows. On November 15, 1982, Respondent discharged driver Frank Hartnett for allegedly jamming Respondent's radio frequency, thereby making it impossible for the dispatcher, Susan Patridge, to contact the drivers. Respondent contested Hartnett's claim for unemployment compensation and an unemployment compensation hearing was scheduled by the State of Nevada for some time in December 1982. Hartnett appointed Moscheo to act as his representative for purposes of the unemployment compensation proceeding. On November 18, 1982, Hartnett told Moscheo that he had heard that Patridge intended to give testimony for Respondent at the unemployment compensation hearing which would be damaging to Hartnett's case. Moscheo immediately phoned Patridge and, during the ensuing conversation, in a raised tone of voice warned Patridge that when she testified at Hartnett's unemployment compensation hearing she "had better be on the right side of the fence or you are going to get hurt" and abruptly ended the conversation. It was not until December 6, 1982, that Patridge told Respond-

¹⁷ As described in detail *supra*, D'Amore's discharge was revoked and he was reinstated when Ashment discovered that D'Amore had not in fact engaged in any union activity, but that it was a case of mistaken identity.

¹⁸ My conclusion that Ashment intended to use the argument initiated by Moscheo with D'Amore as a pretext to discharge Moscheo because of his union activities is based on the fact that Ashment indicated to D'Amore that he intended to fire Moscheo after learning that Moscheo had stated that the Union, and Moscheo as a member of the Union's negotiating committee, intended to take steps to change the method which the Company was using to compute the seniority of the former Nellis cab drivers now in its employ. Also the record reveals that Ashment indicated that it was his intention to discharge Moscheo even though he had been assured by D'Amore that Moscheo and D'Amore had only engaged in a loud verbal argument. In addition Ashment had no reason to believe that any threats had been expressed by Moscheo, other than that the Union would take steps concerning the method used to compute the seniority of the former Nellis cab drivers, or that the argument interfered with the work of D'Amore, Moscheo, or any of the other employees who were present.

¹⁹ In concluding that a preponderance of the evidence in the record as a whole establishes that Respondent's union animus was a motivating factor in its decision to discharge Moscheo I have *not* relied on the following considerations: (1) Ashment's failure to secure Moscheo's version of the episode which resulted in Ashment's decision to discharge him; (2) the failure of Ashment on September 8, 1981, prior to Moscheo's union activities, to discharge Moscheo for "high flagging"; (3) Ashment's consultation with Respondent's board of directors before effectuating his decision to discharge Moscheo; and (4) the timing of the discharge insofar as it took place shortly after Ashment learned that Moscheo in his role as the Union's chief steward was soliciting the employees to protest Respondent's refusal to bargain by engaging in a strike and by publicizing its employment grievances through the media. Regarding (1), Ashment's credible and uncontradicted testimony, which when viewed in the light of the whole record is not inherently implausible, is that his failure to get Moscheo's side of the story before reaching his discharge decision was not unusual as his usual practice when informed that an employee had engaged in a serious act of misconduct was to discharge the employee and then to listen to the employee's story and to rescind the discharge if the story rang true. Regarding (2), Respondent's policy manual does not state either directly or by implication that the act of "high flagging" will result in an employee's immediate termination and the credible and uncontradicted testimony of Ashment, which is not impugned by the record as a whole, is that Ashment normally does not terminate a driver for a first offense of "high flagging." Regarding (3), since the discharge of a leading union adherent such as Moscheo was certain to lead to litigation, Ashment's discussion with the board of directors about the matter before implementing his decision to discharge Moscheo does not warrant an inference of illegal motivation. And, regarding (4), this is not a case where Ashment tolerated Moscheo's misconduct until he learned of Moscheo's union activities; rather here Ashment acted on Moscheo's misconduct immediately on learning about it.

ent's general manager Ashment about this threat at which time Ashment decided to discharge Moscheo for threatening Patridge. In short the record reveals that: (1) Moscheo warned Patridge that she would "get hurt" if the testimony she gave at Hartnett's unemployment compensation hearing was damaging to Hartnett's case; (2) this threat by its very nature was reasonably calculated to cause Patridge and Respondent to believe that Moscheo's use of the phrase "get hurt" was synonymous with physical abuse; and (3) Respondent discharged Moscheo for making this threat as soon as the threat was brought to its attention.

I am persuaded that even absent Moscheo's union activities General Manager Ashment during the normal course of business would have discharged Moscheo when Ashment learned that he had threatened to hurt Patridge if she gave testimony damaging to Hartnett at Hartnett's unemployment compensation hearing. Moscheo's threat ranks among the most flagrant and egregious types of employee misconduct for which an employee would ordinarily be expected to be discharged. It was not only reasonably calculated to lead Patridge to believe that Moscheo meant to abuse her physically, but the clear intent of the threat was to coerce Patridge into giving testimony at Hartnett's State of Nevada unemployment compensation hearing which would not be harmful to Hartnett's case, even if Patridge had to commit perjury. Also there is no evidence that such conduct or conduct of a similar nature has been condoned by Respondent.²⁰ It is for these reasons that I find that Respondent has established that Moscheo would have been discharged on December 7, 1982, even absent his union activities. I recognize that Respondent welcomed and was looking for an excuse to discharge Moscheo because of his union activities, and was aware that the legality of Moscheo's discharge would be closely scrutinized, but on balance I conclude that Moscheo's flagrant misconduct caused his discharge and would have done so even in the absence of his union activities.²¹ I there-

²⁰ The fact that Supervisor Martinez on more than one occasion merely verbally warned employees for physically threatening one another is not comparable to the instant situation where the object of the threat was to coerce Patridge into giving testimony at a State of Nevada unemployment compensation hearing which would not be harmful to the claimant, even if Patridge had to commit perjury. In addition, the record reveals that Respondent has in fact discharged employees for threatening other employees with physical abuse. On December 7, 1982, the same day as Moscheo's discharge, one of Respondent's supervisors discharged driver Joe Nolan for cussing and physically threatening a female employee and on October 20, 1980, Ashment discharged driver Mike Harris for threatening a dispatcher with bodily harm. I recognize that Nolan's work performance was generally unsatisfactory, whereas Moscheo's was well above average, and that Harris had only approximately 7 months' seniority at the time of his discharge, whereas Moscheo had approximately 2-1/2 years of seniority; but I also note that Moscheo's employment record was not unblemished as in September 1981, as described supra, he received a 3-day disciplinary suspension for "high flagging." In any event, as I have indicated supra, I am of the opinion that the offense of threatening an employee with physical violence is not comparable to, nor is it nearly as serious as, making such a threat with the intent to influence the recipient's testimony at a State of Nevada unemployment compensation hearing.

²¹ See *P. G. Berland Paint City*, 199 NLRB 927, 927-928 (1972), where the Board stated:

On the record it is fair to assume that the Respondent entertained a desire to get rid of [the alleged discriminatee], whose union activi-

ties it resented, and was pleased to have an opportunity present itself for doing so. But that alone is not enough to establish that the discharge was in violation of Section 8(a)(3). The mere fact that an employer may want to part company with an employee whose union activities have made him *persona non grata* does not *per se* establish that a subsequent discharge of that employee himself obliges his employer by providing a valid independent reason for discharge — i.e., by engaging in conduct for which he would have been discharged anyway — his discharge cannot properly be labeled a pretext and ruled unlawful.

b. General Manager Ashment threatens to discharge employees for engaging in a strike

The complaint alleges that Respondent, through its General Manager Ashment, violated Section 8(a)(1) of the Act by informing an employee that employees who failed to report for work because of a strike would be terminated. In this respect the record, as I have described in detail supra, reveals that on December 1, 1982, Moscheo, in response to Ashment's inquiry, told Ashment that the drivers intended to protest Respondent's refusal to bargain with the Union by ceasing work and engaging in a strike during the January 1983 Consumers Electronics Convention. Ashment questioned the legality of the strike and threatened to terminate any driver who supported the strike. Ashment's threat to discharge employees who supported the strike was a blatant violation of Section 8(a)(1) of the Act.²²

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Yellow Cab Company of Nevada, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to terminate employees if they engage in an economic or an unfair labor practice strike.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

²² In so concluding I have considered whether Ashment's subsequent remarks made during his December 1 conversation with Moscheo had the effect of repudiating his threat to discharge the strikers. I think not. Although later during this conversation Ashment conceded the legality of the strike if it was an unfair labor practice strike, and indicated that the Company would have the right to hire new drivers to take the place of the strikers, Ashment did not expressly repudiate or otherwise disavow his earlier threat to discharge the strikers. Quite the contrary, Ashment's later comment to Moscheo, that in rehiring the strikers Respondent would have the right to review their past employment records to decide whether Respondent wanted to hire them, was reasonably calculated to lead Moscheo to believe that Respondent intended to terminate the strikers and to treat them as new employees for purposes of reemployment.

²³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix."²⁴ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

²⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges that Respondent violated the Act other than found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT threaten to terminate employees if they engage in an economic or unfair labor practice strike.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

YELLOW CAB COMPANY OF NEVADA, INC.